

Child and Family Services Agency**Notice of Emergency and Proposed Rulemaking**

The Director of the Child and Family Services Agency ("CFSA"), acting pursuant to § 2(o) of the Child and Family Services Agency Establishment Amendment Act of 2000, effective April 4, 2001, D.C. Law 13-277, D.C. Official Code § 4-1303.03(a-1), (10), (12) (2001) and § 4 of the Youth Residential Facilities Licensure Act of 1986, effective August 13, 1986, D.C. Law 6-139, D.C. Official Code § 7-2103 (2001), hereby gives notice of her intent to amend Chapter 60 of Title 29 DCMR, "Foster Homes", by adding a new § 6027, by renumbering §§ 6027 through 6031 as §§ 6028 through 6032, respectively, by striking and inserting in its place a defined term in § 6099, and by adding two new defined terms to § 6099. The new section and its accompanying new definitions will permit the issuance of a temporary license to operate a foster home to certain kin.

The emergency that creates the need for this rule change is the immediate need to protect foster children by making possible their expedited placement with kin in studied and licensed foster homes. When a child must be removed from her or his home because of abuse or neglect, the child's immediate health, safety and welfare require the District to locate and place the child as quickly as possible in out-of-home placement that meets the child's specific, individual needs. For many children, kin (whether relatives or unrelated persons with longstanding ties to the child or family) who can bring the child into their home are the placement best suited to meet the child's urgent needs. However, the child's immediate protection also requires that before a child is placed in any out-of-home placement, both the caregiver (kin) and the home be studied and licensed. When the potential caregiver is kin to the child, however, the child's urgent needs can be protected with an initial and temporary licensing process that examines criminal, child protection and health histories, as well as the home itself, permits a temporary license if those are satisfactory, and requires the full panoply of protections set forth in Ch. 62 to be undertaken for a non-temporary license.

Notice of Emergency and Proposed Rulemaking was originally published in the March 26, 2004 D.C. Register (51 DCR 3311). As a result of comments to the temporary licensing process, CFSA is making several changes to the rulemaking.

CFSA is clarifying the situations in which temporary licensing is permitted. In order to comply with federal requirements for the use of the Interstate Identification Index System (III), CFSA is clarifying that the temporary licensure process is only available in emergency situations, and defining those situations.

CFSA is also clarifying that denial of a temporary license does not give rise to an administrative appeal. Because the temporary licensing process is an interim process towards receiving a license to operate a foster home, appeal rights would be exercised from a denial of the application to operate a foster home.

Lastly, CFSA received comments from the Gay and Lesbian Activists Alliance recommending

that § 6027.3(b)(1) of Chapter 60 of Title 29 DCMR of this rulemaking [§ 6021.2(b)(2) in the rulemaking published in the March 26, 2004 D.C. Register (51 DCR 3311)], be amended to read: "Is a relative of the foster child by blood, marriage, **domestic partnership** or adoption" [emphasis added]. This language is based on statute (§ 201(a) of The Adoption and Safe Families Amendment Act of 2004, effective June 27, 2000, D.C. Official Code § 4-1301.02(12) and (14) (2001)), and CFSA therefor declined to make this change. CFSA notes, however, its agreement that persons who are members of the child's network of familial relations should be considered kin for the purpose of temporary licensure. CFSA believes that this is accomplished by § 6027.3(b)(2) of Chapter 60 of Title 29 DCMR of this rulemaking (see also, § 201(a) of The Adoption and Safe Families Amendment Act of 2004, effective June 27, 2000, D.C. Official Code § 4-1301.02(12) and (14) (2001)).

The Director of CFSA also gives notice of intent to adopt these rules in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

The emergency rules were adopted and became effective on January 1, 2005. They will remain in effect for 120 days, or until publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

29 DCMR Ch. 60 is amended as follows.

A new § 6027 is added as follows:

6027 TEMPORARY LICENSE FOR KIN

6027.1 CFSA may issue a temporary license to operate a foster home only if:

- (a) The applicant is kin to each foster child who would be placed in her or his home;
- (b) The applicant has submitted an application for a license to operate a foster home;
- (c) The applicant has:
 - (1) Received a satisfactory criminal records check from the Interstate Identification Index System of the National Crime Information Center (III);
 - (2) Applied for a criminal records check in accordance with § 6008 of this Chapter;
 - (3) Complied with the requirements of § 6009 of this Chapter concerning

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the Child Protection Register check;

(4) Received a satisfactory safety assessment of the prospective foster home; and

(5) Demonstrated the willingness and ability to provide a safe and secure environment for a foster child;

(d) All individuals eighteen (18) years of age or older residing in the prospective foster home have:

(1) Received a satisfactory criminal records check from the III;

(2) Applied for a criminal records check in accordance with § 6008 of this Chapter; and

(3) Complied with the requirements of § 6009 of this Chapter concerning the Child Protection Register check; and

(e) There exist exigent circumstances as set forth in § 6027.2 of this Chapter.

6027.2

Exigent circumstances exist if a child who would be placed in the home if it had a temporary license:

(a) Must be removed from her or his home immediately because of suspected or supported child abuse or neglect;

(b) Is in CFSA's custody and must be removed from her or his placement immediately; or

(c) Has been removed from her or his home because of child abuse and neglect; and

(1) A petition alleging neglect of the child has been filed before the Family Division of the Superior Court of the District of Columbia pursuant to D.C. Official Code § 16-2305; and

(2) A disposition of the neglect petition pursuant to D.C. Official Code § 16-2320 has not yet occurred.

6027.3

An applicant is kin to a foster child if the applicant is:

(a) At least 21 years of age; and

(b) Either:

- (1) A relative of the foster child by blood, marriage, or adoption; or
- (2) Identified by a relative of the foster child by blood, marriage, or adoption, in a sworn affidavit, to have close personal or emotional ties with the foster child or the foster child's family, which pre-dated the foster child's placement with the individual.

6027.4 A temporary license:

- (a) Permits a foster home to operate prior to issuance of an annual license and while the foster parent(s) attempts to satisfy the requirements for a license; and
- (b) Expires in one hundred twenty (120) days from the date of the temporary license, unless renewed.

6027.5 A temporary license may be renewed once and for no more than ninety (90) days if the:

- (1) Applicant is making a good faith effort to comply with all elements of the foster home licensing process as set forth in this Chapter;
- (2) Renewal is needed to complete the licensing process;
- (3) Licensing process is not completed for a reason that is beyond the control of the applicant; and
- (4) Applicant has otherwise complied with the requirements of this Chapter.

6027.6 A temporary licensee under this section shall actively and promptly take all steps required for full licensure under this Chapter.

6027.7 A foster child who is not kin to the applicant may not be placed in a foster home that has a temporary license.

6027.8 Except as specifically set forth in § 6027, all sections of this Chapter shall apply to a foster parent or foster home that has a temporary license except that the denial of a temporary license shall not be grounds for an appeal pursuant to § 6032 of this Chapter.

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The following sections and their subsections are renumbered as follows:

| Current section/subsections | Title | Renumbered as |
|-----------------------------|--|---------------|
| 6027 | Licensing process | 6028 |
| 6028 | Denial of license or renewal | 6029 |
| 6029 | Annual re-evaluation and license renewal | 6030 |
| 6030 | Suspension or revocation of license | 6031 |
| 6031 | Appeal procedure | 6032 |

The definition of "applicant" is struck in its entirety, and the following definition is inserted in its place:

6099 DEFINITIONS

"Applicant" -- the person(s) applying to be licensed as a foster parent, including as appropriate the person applying for a temporary license, under this Chapter.

The following definitions are added to 29 DCMR § 6099 following the definition of "revocation".

6099 DEFINITIONS

"Safety assessment" -- an assessment of an applicant's residence, including but not limited to its general physical environment, sanitation and external environment.

"Temporary license" -- a license to operate a foster home for a temporary period issued to a foster home that has complied with the requirements of § 6027 of this Chapter.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing within 30 days after the date of publication of this notice in the D.C. Register. Comments should be filed with Sarah R. Kaplan, Assistant General Counsel, Child and Family Services Agency, 400 6th Street, S.W., Washington, DC 20024. Copies of these proposed rules may be obtained without charge at this address.